IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 7TH NOVEMBER 2006 / 16TH KARTHIKA 1928

CRL.A.No. 708 of 2006()

SC.522/2004 of ADDL. SESSIONS COURT (ADHOC), PATHANAMTHITTA
CP.58/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

APPELLANT(S):

KRISHNANKUTTY @ KUNJUMON,
C. NO.295, CENTRAL PRISON,
POOJAPURA , THIRUVANANTHAPURAM 695 012.

BY ADV. SRI.E.S.ASHRAF(STATE BRIEF)

RESPONDENT(S):

THE STATE OF KERALA
THROUGH A PUBLIC PROSECUTOR.

PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/11/2006 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

K. HEMA, J.

Crl. A. No. 708 of 2006

Dated this the 7th day of November, 2006

JUDGMENT

Appellant challenges the conviction and sentence passed against him under Section 498-A of Indian Penal Code (IPC, for short) and Section 4 of Dowry Prohibition Act. He was charge-sheeted for offences under Sections 304-B, 498-A of IPC and Section 4 of Dowry Prohibition Act. The accused was found guilty and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for six months for offence under Section 4 of Dowry Prohibition Act and rigorous imprisonment for two years with fine of Rs. 5,000/- and in default to undergo simple imprisonment for three months for offence under Section 498-A of IPC. The sentences were directed to run concurrently. The said conviction and sentence are challenged in this appeal.

2. According to prosecution, deceased Sujatha committed suicide because of the mental agony suffered due to the harassment from the side of the accused. Therefore, deceased Sujatha left her parental house on 23.11.00 at about 9.00a.m and committed suicide on 24.11.00 at 6.00a.m, by jumping into the river with her two

children. The son was rescued by the people, but Sujatha and her daughter died.

3. To prove the prosecution case, prosecution has examined PWs 1 to 15 and marked Exhibits P1 to P13. Accused did not adduce any evidence. The court below found that the evidence of PWs 1 to 3 was believable and it has proved the harassment of the accused on deceased Sujatha, which has driven her to commit suicide and hence an offence under Section 498-A of IPC is made out. It was also found from their evidence that there was demand for dowry and hence the accused was convicted for offence under Section 4 of the Dowry Prohibition Act.

4. The case set up by the prosecution was that because of the torture deceased Sujatha was undergoing severe mental agony which driven her to commit suicide. To prove the death, prosecution relies upon mainly the medical evidence tendered by PW12 doctor and the postmortem certificate Exhibit P9. PW12 gave evidence that he conducted postmortem examination on the body of Sujatha on 30.11.00 (ie. after six days of the incident). He opined that the cause of death was due to drowning. The mere fact that deceased died due to drowning is not sufficient to conclude that the deceased committed suicide. The drowning can be homicidal, suicidal or even accidental.

5. In this connection, it is relevant to scan through the evidence and consider whether deceased Sujatha had any reason for committing suicide. Apart from the medical evidence, no evidence is adduced to conclude the cause of death. No circumstantial evidence is adduced to indicate that deceased Sujatha had committed suicide. The evidence adduced only proves that she died due to drowning. On an analysis of the evidence of the near relatives PWs 1 to 3 and PW13 and also PW4 the independent witness, it cannot be held that deceased Sujatha had any reason to commit suicide on the alleged date of occurrence.

6. PW1 deposed that deceased Sujatha left his house on 23.11.00 at about 9.30a.m stating that she would go to her husband's house and come back in the evening. Deceased Sujatha did not come back on that day. PW1 deposed that he waited in the bus stand till 7.30p.m till the last bus also left. He returned only thereafter. PW3, the brother of deceased Sujatha stated that on reaching home on 23rd evening, his father had told him that his sister had gone to her husband's house and did not return. On the next day, he went for coolie work, as usual. PW1 stated that deceased Sujatha while leaving the house had told him that she is going to her husband's house to get the dresses of her children.

7. Though deceased Sujatha did not come back on the same

night, none of the near relatives of deceased Sujatha including her father or brother made any enquiries about her. They did not, in fact, feel the need for making any enquiries about deceased Sujatha, though she had gone all alone with two minor kids and she failed to return as promised. Even on the next day, her own brother while going for work did not feel the need for making any enquiries about deceased Sujatha. All these would indicate that nobody expected any untoward incident or any cause for deceased Sujatha to commit suicide. From the conduct of PW1 and PW3, the two male members in the family, it is clear that in spite of the fact that deceased Sujatha did not return in the evening as promised, they did not go in search of deceased Sujatha at least to her husband's house.

8. Neither PWs 1, 2, 3 or even PW4 has a case that deceased Sujatha was found in a depressed state of mind on 23rd, when she was found her last by them. Admittedly, deceased Sujatha was in the parental house for two months prior to the incident. Nobody has a case that on 23rd, when she left the house or on the previous day, on 22nd, deceased Sujatha was in a depressed state of mind which gave them any hint that she would commit suicide. Everything appeared to be normal until information was received that something had happened. PW1's case is that he went straight to the police station to

find out what happened. He was informed that his grandson Akhil was in the hospital and accordingly he went to meet the child. PW3 has also given evidence that he went to the hospital along with PW1 to meet the child. PW4 stated that he had seen deceased Sujatha on 23rd morning from the bus stop and she allegedly told PW4 that she was going to her husband's house and she would come back after two days. PW4 had no case that Sujatha was found in a mentally depressed state or that there was anything abnormal in her behaviour. Therefore, there was nothing on record to indicate that Sujatha was in any peculiar mental condition which could have been driven to suicide.

9. What exactly transpired immediately prior to the incident is not available in evidence. In fact, there was no investigation into this aspect at all. Admittedly, on 23rd morning at about 9.00a.m, (going by the evidence of PW4, at about 8.30a.m) deceased Sujatha had left the house of PW1. She was found dead only after seven days, on 30.11.00. As per the prosecution case, she committed suicide on 24.11.00 at 6.00a.m. What transpired in at least between a period of about 24 hours has not been investigated into. Deceased Sujatha crossed a night after leaving the house of PW1 before she allegedly committed suicide. Where exactly she resided and where she spent the night of 23rd, where she was till 24th morning, has not been

investigated into at all.

10. Though Akhil, the deceased's son, escaped death and was rescued by the people, he was not brought to court. He was not examined in court. There is no explanation for non-examination of Akhil. In fact, as per the evidence, the whereabouts of Akhil itself is not clear. PW1 would say that Akhil was taken away by him, whereas PW3 would say that Akhil is staying with him. The accused would claim that his son Akhil is staying with the accused. The most crucial evidence which can be procured regarding what transpired after deceased left PW1's house is that of Akhil. The child is aged 8½ years, as per the evidence of PW2. But, his evidence is kept back by the prosecution.

11. The prosecution has not made any attempt to prove the circumstances under which deceased Sujatha died. Whether it was a case of accidental drowning or it was due to a homicide or whether it was only a suicide, cannot be concluded from the evidences adduced in this case. Curiously, there is absolutely no investigation into this aspect. Even persons who rescued Akhil were not questioned by investigating officers. What was the version of the boy immediately on rescuing is not before court. Certainly, the questioning of these witnesses would disclose the circumstances under which deceased

Sujatha died. But, nothing is brought on record. No materials are collected by the investigating machinery to ascertain the circumstances which lead to the death of deceased Sujatha. In the absence of this, it cannot be concluded that deceased Sujatha committed suicide, as alleged by the prosecution. This fact has not been proved by the prosecution.

12. In the light of the findings which I have already entered, it may not be necessary to go into the question whether the conduct of the accused drove the deceased to commit suicide. Still, I shall go through the evidence to find out whether there is any satisfactory materials regarding the same. The case of the prosecution is that there was demand of dowry and the accused is found guilty for offence under Section 4 of the Dowry Prohibition Act. As per Section 4, "if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, any dowry shall be punishable" under the said section. The only evidence regarding the demand of dowry from the father of the deceased Sujatha is that of PW1. PW1 gave evidence that there was demand of dowry to him. But, he has not stated when the demand was made. None of the details regarding the date, time or place where the demand was made are stated by PW1. PW1 deposed that the marital relationship

between the accused and the deceased Sujatha was cordial for two years after the marriage.

13. PW2, the sister of the deceased Sujatha, would state that there was no problem between the accused and the deceased Sujatha for about 1½ years after the marriage. The trouble started only thereafter. They were living happily for 1½ years. As per the evidence, the marriage between the deceased Sujatha and the accused took place on 27.04.1995. So the demand of dowry might have been made by 1997 if the evidence of PWs 1 to 3 are believed. PW2 deposed that she had even seen injuries on the body of the deceased Sujatha when she came to the house. But, she had no such case before the police and it was brought out as an omission. If as a matter of fact, PWs 1 to 3 are to be believed, the harassment from the side of the accused would be known to the entire family members from 1997 onwards. But, the case now put forward by the witnesses is that the harassment was there since after two years of the marriage.

14. PW1 had no case to the police regarding dowry harassment when he lodged the First Information Statement Ext. P1. His daughter was missing on 23.11.2000 and the grandson was rescued by the people of the locality from a river. There was ample time for PW1 to ascertain from the grandson or from the family members, as to what

transpired. But, PW1 does not appear to have any doubt regarding the possibility of commission of suicide on demand of dowry at a time when Ext.P1 was lodged. Ext. P1 is totally silent about any demand of dowry being made or any harassment made on the deceased by the accused. Ext. P1 is lodged before the police only on the next day of the incident, after about 32 hours of deceased Sujatha leaving the house.

15. The evidence of PW1 discloses that he had gone in search of deceased Sujatha to the house of the accused and thereafter to various other houses of the relatives. If, as a matter of fact, PW1 had any doubt regarding the possibility of committing suicide due to dowry harassment, this conduct is not probable. Anyway, the omission in the First Information Statement speaks much about the absence of demand of dowry and harassment. In the above circumstances, the solitary piece of evidence of PW1 without the details as to when the demand was made, where the demand was made etc. I find it difficult to accept solitary evidence of PW1 to hold that there was demand of dowry.

16. There is also contradiction between evidence of PW1 and PW3 the brother of deceased Sujatha regarding the nature of dowry demanded. PW3 only stated that "if" the accused wanted 40 cents of

property or Rs. 50,000/-, they would have agreed to give the same. At any rate, the omission in Ext. P1 regarding dowry demand, I find that no much value can be given to the belated version given by PWs 1 or 3 at the time of evidence.

17. Now coming to the question of harassment under Section 498-A of I.P.C, I find that First Information Statement is totally silent about the same. PW1 gave statement to the police, but he did not even mention any possibility of commission of suicide because of the ill-treatment by the accused. It can also be seen that, the case of PWs 1 to 3 is that, deceased Sujatha had been in the house of PW1 for the past two months. It has been admitted by PW1 and it appears from the evidence of PWs2 and 3 also that Sujatha had come home to look after the ailing mother and also the sister-in-law who had undergone a surgery.

18. PW2 stated that accused would not allow deceased to come to her parent's house for this purpose. But, the accused put forward a case that the deceased Sujatha was sent to her house when a request was made to help the family members, since her mother was sick and her sister-in-law had undergone a surgery. This case has been probabilized by the evidence of PWs 1 to 3. The conduct of the witnesses PWs 1 and 3 also is relevant in this context. Though

deceased Sujatha was found missing and PW1 expected her to come back on the same day in the evening, they had not gone in search of deceased Sujatha to the house of the accused.

19. If PWs 1 or 3 anticipated some untoward incident, it is unlikely that they would not go in search of Sujatha to the house of the accused, especially that there was an alleged quarrel between the couple and the deceased Sujatha was harassed by the accused. PW3 deposed that he had gone for his work even on hearing from his father that Sujatha had not come back from her husband's house. His conduct would only indicate that the male members of the family never expected anything untoward and they were peaceful until the news came that Akhil, the grandson, was rescued by people. Even thereafter, till the evening, PW1 had sufficient time to think about what would have transpired and he had absolutely no doubt regarding any harassment being caused to deceased Sujatha by the accused and that must be a reason why there is fatal omission in Ext. P1 regarding the harassment from the side of the accused to deceased Sujatha.

20. At this juncture, it has to be borne in mind that PW1 deposed that, she had told PW1 that she used to be assaulted by the accused on getting drunk, when she came to his house for a stay prior to the incident and towards the end and that she used to speak about

her difficulties to her sister and mother. If this is accepted, even PW1 was aware of such harassment prior to the death of deceased Sujatha. But, there is no explanation why he had omitted to make such statements in Ext. P1. In fact, it has been brought out from the evidence of PW1 that the allegation made by PW1 regarding the harassment from her husband and beating etc. were all omissions in the case diary statement made by PW1. It was only a subsequent development at the time of examination before the court.

21. The evidence of PW2 also is of similar nature. PW2 deposed that she had seen injuries on the deceased Sujatha after one week of Onam. But, this fact was brought out as omissions in the case diary statement. It appears that, in that instance, she had direct knowledge about the alleged ill-treatment from the husband of deceased Sujatha and this is a very important fact. But, this was also not stated to the police and it was disclosed before the court at a highly belated stage, while she was examined in court. Though PWs 1 to 3 would claim and allege that the deceased Sujatha used to be harassed by the accused demanding payment of money, he has no case that he was a witness to any of these things. He only stated that Sujatha used to tell him about the details of the harassment.

22. PWs 1, 2 and 3 gave evidence to similar effect that certain

statements were made by deceased Sujatha to them regarding the ill-treatment at the hands of the accused. PW2 deposed that on several occasions the deceased Sujatha used to tell her that the accused used to come home drunk and ill-treat her. But, these facts were brought out as omissions in the case diary statement. It has also been stated that on several occasions she had told PW2 that the accused used to demand her to get the property sold and bring money etc. PW1 also stated that his daughter used to tell him that she was ill-treated by her husband. But, that fact was also brought out as omissions in the case diary statement. Therefore, the belated statement regarding the alleged statement made by deceased Sujatha to PWs 1 to 3 regarding the ill-treatment at the hands of the accused cannot be given much weight to secure a conviction against the accused.

23. Even otherwise, the statements made by Pws1 to 3 cannot be admitted in evidence under Section 32(1) of the Evidence Act. Prosecution has not proved that the deceased Sujatha has committed suicide. It is only if the death is proved to be as a result of suicide, the statements made by deceased Sujatha to other witnesses may become relevant as a statement relating to cause of death or any of the circumstances of the transaction which resulted in her death. Since evidence is lacking to establish that drowning was as a result of

suicide, the statement allegedly made by deceased Sujatha to the witnesses PWs 1 to 3 cannot have any connection to the cause of death and it is not admissible under Section 32(1) of the Evidence Act.

24. The court below has not looked into the evidence in this perspective. The court has not considered the various aspects in the judgment and hence the findings are unsustainable. In the above circumstances, I find that the conviction and sentence passed against the appellant are unsustainable.

In the result, the conviction and sentence passed against the appellant under Section 4 of the Dowry Prohibition Act and Section 498-A of Indian Penal Code are set aside. The accused is found not guilty and he is acquitted of the above said offences. He is set at liberty forth with. Registry is directed to issue release memo to the jail authorities concerned accordingly.

This appeal is allowed.

K. HEMA, JUDGE.

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